

Application No. 09/975,588

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REMARKS

In the Official Action mailed 1 July 2005, the Examiner reviewed claims 1-41. The Examiner has rejected claims 9-16 and 22-26 under 35 U.S.C. §112; rejected claims 1, 2, 8, 17, 27, 28, 35 and 36 under 35 U.S.C. §102(a); rejected claims 3-6, 18-20, 29-34 and 37-41 under 35 U.S.C. §103(a); and rejected claims 7, 9-16 and 21-26 under 35 U.S.C. §103(a).

No claims are amended. Claims 1-41 remain pending.

The Examiner's rejections are respectfully traversed below.

Rejection of Claims 9-16 and 22-26 under 35 U.S.C. §112:

The Examiner rejected claims 9-16 and 22-26 under 35 U.S.C. §112 as indefinite. Applicant requests reconsideration.

With respect to independent claim 9, the Examiner states that step "e)" is a mistake, because it recites "un-muting" the first audio source if the stored value indicates that the sound source was un-muted, after step "b)" recites "muting" the first audio source. The Examiner has misread the claim. Step e states that if the stored value indicates that the first audio source was not muted, then un-muting the first audio source. The stored value is stored by execution of the computer program, at a time such as before the hearing test is started. The limitation involves use of the computer program to un-mute the first audio source, at some time such as after the hearing test is completed, to return the set up of the computer to the condition prior to execution of the program, as indicated by the stored value.

Claims 10-16 were rejected as dependent on claim 9. Reconsideration is requested in light of the discussion of claim 9.

Claim 22, and claims 23-26 which depend from claim 22, were rejected for the same reason as claim 9, and reconsideration is requested for the same reasons.

Accordingly, reconsideration of the rejection of claims 9-16 and 22-26 is respectfully requested.

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Rejection of Claims 1, 2, 8, 17, 27, 28, 35 and 36 under 35 U.S.C. §102(a)

The Examiner rejected claims 1, 2, 8, 17, 27, 28, 35 and 36 under 35 U.S.C. §102(a) as anticipated by "hearingrx.com", which is also referred to as "Audiainc.com" in the Applicant's information disclosure forms. Applicant requests reconsideration.

The Examiner begins the argument with respect to claims 27, 28, 35 and 36, of which claims 27 and 36 are independent claims. Claim 27 includes the limitation reading, "the execution of the computer program un-muting the first audio source." Applicant submits that the "hearingrx.com" document does not teach this feature of the claim. As a basis of the rejection the Examiner states, "The execution of the program as disclosed in hearingrx.com un-muting the first audio source (if it is muted, it wouldn't be able to sent signal to the speaker)." The Examiner does not refer to any specific text in the hearingrx.com document to support this statement, and Applicant does not find any supporting text.

Further, the claimed feature is not inherent in the hearingrx.com document. The claim includes the limitation, "execution of the computer program un-muting the first audio source." In the hearingrx.com document, on the page entitled "Setup Volume Control," a web page is shown that instructs the user to perform sound player set up steps, including the instruction "make sure that the Mute box is NOT checked". Clearly, since the web page instructs the user to un-mute the audio source, there is no computer program in the hearingrx.com document that un-mutes an audio source. The problem solved by the invention is the difficulty and unreliability of relying on a user to perform this step that is critical to success of the hearing test. See, paragraph [0010] in the Background of the Invention of the present application. The present invention on the other hand, removes this responsibility from the user, and provides a computer program that un-mutes the first audio source.

Claims 28 and 35 depend from claim 27 and are allowable for at least the same reasons.

Independent claim 36 includes the limitation that the stored computer program, when executed, performs "un-muting an audio source." This limitation is not taught nor suggested by the hearingrx.com document for the reasons discussed above with respect to a corresponding limitation in claim 27.

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With respect to claims 1, 2, 8 and 17, the Examiner also relies on the hearingrx.com document, at the page entitled "Setup Volume Control." On this page, instructions are presented to the user to mute the sound source for the "window exclamation." Independent claim 1 includes the limitation, reading "the execution of the computer program muting the first audio source." Thus, like the un-muting step discussed above with respect to claim 27, the muting step is performed by execution of the claimed computer program. The hearingrx.com document teaches a procedure that requires the user to mute the sound source, which is exactly the problem of the prior art discussed in the present application. The present invention eliminates the problem, and improves the reliability of on-line hearing tests significantly.

Claims 2 and 8 depend from claim 1 and are allowable for at least the same reasons.

Independent claim 17 includes the limitation that the stored computer program, when executed, performs "muting an audio source." This limitation is not taught nor suggested by the hearingrx.com document for the reasons discussed above with respect to a corresponding limitation in claim 1.

Accordingly, reconsideration of the rejection of claims 1, 2, 8, 17, 27, 28, 35 and 36 is respectfully requested.

Rejection of Claims 3-6, 18-20, 29-34 and 37-41 under 35 U.S.C. §103(a)

The Examiner rejected 3-6, 18-20, 29-34 and 37-41 under 35 U.S.C. §103(a) as unpatentable over hearingrx.com in view of allegedly well known prior art. Applicant does not acknowledge that a person of skill in the art would apply the claimed techniques under the standards that apply to rejections under 35 U.S.C. §103(a).

Claims 3-6 depend from claim 1 and are patentable for at least the same reasons.

Claims 18-20 depend from claim 17 and are patentable for at least the same reasons.

Claims 29-34 depend from claim 27 and are patentable for at least the same reasons.

Claims 37-41 depend from claim 36 and are patentable for at least the same reasons.

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Accordingly, reconsideration of the rejection of claims 3-6, 18-20, 29-34 and 37-41, as amended, is respectfully requested.

Rejection of Claims 7, 9-16 and 21-26 under 35 U.S.C. §103(a)

The Examiner rejected claims 7, 9-16 and 21-26 under 35 U.S.C. §103(a) as unpatentable over hearingrx.com in view of the didyouhear.com document of record, and Barmore (U.S. Patent No. 6,016,352). Applicant requests reconsideration.

In connection with this rejection, the Applicant points out that the Examiner refers to the hearingrx.com document as a print out of a program. Actually, the document is a print out of a web page.

Of these claims, claim 7 depends from claim 1, and is patentable for at least the same reasons. In addition, the act in claim 7 of muting a microphone input is not described in any of the references relied upon by the Examiner. The Examiner does not specifically refer to claim 7 in the rejection, but makes the statement "A computer, as commonly known, could have multiple sound sources, including microphone. The user can manually mute each and every sound source, but this takes time and the user sometime might forget." (Office Action, page 5). Because the just quoted statement mentions a microphone, perhaps this constitutes the Examiner's basis for rejecting claim 7. Applicant is not willing to admit that it is true that a user can manually mute each and every sound source in a computer system. Furthermore, even if it were true, that alleged fact would not suggest a computer program which mutes sound sources including a microphone input as required in claim 7.

The Examiner cites Barmore to teach the claim limitations relating to muting a sound source. However, the Examiner misreads the reference. Barmore teaches circuitry for muting an output. The sound sources used to drive the outputs are not described in Barmore. Claim 7 explicitly requires muting a microphone input and generating a stimulus. Therefore, the Examiner's *prima facie* case of unpatentability as to claim 7 is incomplete and based on a misreading of the references.

Independent claim 9 was misinterpreted by the Examiner as discussed above in connection with the rejection under section 112, second paragraph. The claim requires a computer program that stores a value indicating whether a sound source is muted or un-

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muted, muting the sound source if it is un-muted at the time the value is stored, and then if it had been un-muted at the time that the value is stored, then un-muting the sound source. This process provides for automatically muting a sound source that could interfere with a test program, and then putting that sound source back in the condition that was encountered when the program began executing. No references suggest this procedure, and the Examiner has not applied references to suggest this procedure.

Claims 10, 15 and 16 depend from claim 9, and are patentable for at least the same reasons.

Claim 21 depends from claim 17, and is patentable for at least the same reasons. Furthermore, claim 21 includes a limitation related to muting a microphone input. As discussed above in connection with claim 7, no reference suggests this combination.

Independent claim 22 includes limitations similar to those of independent claim 9, and is patentable for at least the reasons discussed above in connection with claim 9.

Claims 23-26 depend from claim 22, and are patentable for at least the same reasons.

In connection with claims 12-14 and 23-25, the Examiner argues that the muting circuit of Barmore, "should change the setting in the mute box and volume setting." This comment is not supported by the Barmore description, and does not appear to be correct. In particular, describes a circuit "to mute an audio signal at an audio output." (Abstract). There is no discussion whatsoever in Barmore of muting audio sources.

Muting an output using a circuit as taught by Barmore is fundamentally different than muting and/or un-muting audio sources using a program as claimed herein. As stated in Barmore, "The ability to quickly mute a plurality of audio output signals is particularly helpful in personal computer systems having a plurality of audio channels, where the software applications running on such personal computer systems can mute all of the audio output signals by toggling a single, general-purpose input and output (GPIO) bit, rather than toggling the bits for individual audio output signals." Barmore, column 5, lines 23-29. One would not apply the muting circuit of Barmore in the present invention, because it would disable the computer system audio output completely, independent of the audio settings for the sound sources used to drive the output. Accordingly, the

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combination suggested by the Examiner would be inoperative to solve the problems addressed by the present invention.

Accordingly, reconsideration of the rejection of claims 7, 9-16 and 21-26 is respectfully requested.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1019-1).

Respectfully submitted,

Dated:

3 Oct 05

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